

caveat in respect of it appears to have been registered against the land in the Land Transfer Office. This Proclamation appears to have been withdrawn except with respect to Subdivision No. 10 (see *Gazette* No. 69, 30th December, 1886). It would appear either that the Proclamation was lost sight of, or that it was treated as having lapsed and become obsolete, for not only was no caveat entered in respect to it, but when “The Native Land Purchase Act, 1892,” was passed, a fresh Proclamation was gazetted, this was quite unnecessary had it been intended that the Proclamation of 1878 should be treated as still existing. Whether the Proclamation of 1892 was valid seems to us a matter of doubt. That Act contemplates the *bonâ fide* entering into negotiations by the Crown for the acquisition of Native land as a condition precedent to the issue of a Proclamation. The evidence before us shows that no such negotiations were entered into. Two Government officers went to Kemp, who was found in a billiard-saloon, paid him the sum of £5, for which Kemp signed a receipt as follows :—

1892, 10th October.—Payment on account of my interest in the Horowhenua No. 11 Block, containing 14,975 acres, which I hereby agree to sell to Her Majesty the Queen.

No negotiations whatever, either before or at any time subsequently to the payment of this £5 to Kemp for the acquisition of this land, or in respect of this transaction, took place; and it is admitted that this was a mere colourable negotiation which it was thought would find jurisdiction for the issue of this Proclamation, the object of the Proclamation being to prevent the Natives selling the land and denuding themselves of everything. Another reason which suggests that the Proclamation of 1878 was treated as no longer existing, is that the Legislature by the “Native Land Court Act Amendment Act, 1891,” section 3, provided that sections numbered 6, 11, 12 of the Horowhenua Block should be inalienable until the termination of next session of the General Assembly. The Crown is not named in this Act, and if the Proclamation of 1878 were treated as subsisting, this provision was entirely unnecessary. Furthermore, a large number of dealings have taken place since 1878, and have been duly registered in the Land Transfer Office with respect to the estates of different owners in Subdivision 3, as will be seen on reference to the epitome of title forming one of the exhibits in evidence. It is a question of law upon which we cannot presume to offer an opinion as to whether, if the Proclamation of 1878 is still in existence, the whole of these dealings are not invalid, in which case the Assurance Fund under the Land Transfer Act would possibly be called upon to make good the losses sustained by the settlers who have *bonâ fide* purchased, cleared, built upon, and improved the land transferred to them.

(9.) As to the *bona fides* on the part of the purchaser, lessee, mortgagor, or mortgagee of any portion of the said block in respect whereof a trust or equitable obligation or undertaking as aforesaid shall be found to exist: And whether any person who has acquired any estate or interest in such land from the nominal owners, or either of them, acquired the same fraudulently, or with knowledge of any such trust or equitable obligation or undertaking.

(9.) At the time the Crown purchased from Warena Hunia, part of Subdivision No. 11, it had notice that this subdivision was tribal land, and that Hunia held it in trust for the tribe. As to Sir Walter Buller's transactions with regard to Subdivision No. 14, we think that, at any rate as to some if not all of them, he had express notice that the land dealt with was subject to a trust, and that even if he had not express notice of a trust he was, with regard to all his transactions, so far put upon inquiry that he had implied notice of the trust. He has been Kemp's solicitor (except when in England) since 1874. He left New Zealand in 1886, prior to the sitting of the Subdivisional Court in that year, and prior to his leaving, according to his own evidence, he “Got a verbal promise from Kemp, that as soon as he had perfected his title and subdivision, he would give me a lease of the Papaitonga and adjacent land.” From 1874 to 1886, Sir Walter Buller states that, “I acted off and on, practically always as Major Kemp's solicitor in the Native Land Court, and elsewhere.” At the time Kemp made this promise to Sir Walter Buller he held one certificate of title issued in 1873 for the whole block, admittedly as trustee for the tribe. On Sir Walter Buller's return to the colony, he finds that the Subdivisional Court of 1886 had issued titles to Kemp for the different